

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

PATRICIA A. GRANT,
Plaintiff,

V.

CLAUDIO GABRIEL ALPEROVICH, *et al.*, Defendants

Case No. C12-1045RSL

ORDER GRANTING
DEFENDANT HORI'S
SECOND MOTION FOR
SUMMARY JUDGMENT

1. INTRODUCTION

This matter comes before the Court on “Defendant Michael K. Hori M.D.’s Second Motion for Summary Judgment Dismissal.” Dkt. # 156. Having reviewed the memoranda, declarations, and exhibits submitted by the parties, the Court finds as follows:¹

II. DISCUSSION

The background facts of this case are set forth in the Court’s prior order granting in part Defendant Hori’s motion for summary judgment, dkt. # 149, and will not be repeated here. Rather, this order will focus on facts relevant to Plaintiff’s allegations that Dr. Hori’s conduct violated Title II, Title VI, and Title XI of the Civil Rights Act and her state law claims of libel, slander, and defamation. Dkt. # 62 at 3. Plaintiff

¹ In the interest of resolving disputes on the merits, the Court has considered Plaintiff's untimely opposition to Defendant's motion. Dkt. # 208.

1 claims that Dr. Hori discriminated against her on the basis of race, disability, and age
 2 when he provided an infectious disease consultation in August 2009 to review her
 3 concerns following gastric bypass surgery. The Court previously dismissed Plaintiff's
 4 claims against Dr. Hori arising under 42 U.S.C. § 1983, 42 U.S.C. § 1985, the
 5 Americans with Disabilities Act, the Age Discrimination Act of 1975, the Health
 6 Insurance Portability and Accountability Act of 1996, and 18 U.S.C. §§ 1347, 1349.
 7 Dkt. # 149. Dr. Hori now moves for summary judgment on Plaintiff's remaining claims.
 8 Dkt. # 156.

9 Summary judgment is appropriate when, viewing the facts in the light most
 10 favorable to the nonmoving party, the records show that "there is no genuine dispute as
 11 to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.
 12 Civ. P. 56(a). Once the moving party has satisfied its burden, it is entitled to summary
 13 judgment if the nonmoving party fails to designate, by affidavits, depositions, answers
 14 to interrogatories, or admissions on file, "specific facts showing that there is a genuine
 15 issue for trial." Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986).

16 All reasonable inferences supported by the evidence are to be drawn in favor of
 17 the nonmoving party. See Villiarimo v. Aloha Island Air, Inc., 281 F.3d 1054, 1061
 18 (9th Cir. 2002). "[I]f a rational trier of fact might resolve the issues in favor of the
 19 nonmoving party, summary judgment must be denied." T.W. Elec. Serv., Inc. v. Pac.
Elec. Contractors Ass'n, 809 F.2d 626, 631 (9th Cir. 1987). "The mere existence of a
 20 scintilla of evidence in support of the non-moving party's position is not sufficient."
Triton Energy Corp. v. Square D Co., 68 F.3d 1216, 1221 (9th Cir. 1995). "[S]ummary
 21 judgment should be granted where the nonmoving party fails to offer evidence from
 22 which a reasonable jury could return a verdict in its favor." Id.

1 **A. 42 U.S.C. § 2000a.**

2 Plaintiff claims that Dr. Hori violated Title II of the Civil Rights Act, which
 3 prohibits discrimination based on race, color, religion, or national origin in the “full and
 4 equal enjoyment of the goods, services, facilities, privileges, advantages, and
 5 accommodations of any place of public accommodation.” 42 U.S.C. § 2000a(a). As an
 6 initial matter, Title II does not prohibit discrimination on the basis of age, gender, or
 7 disability. Thus, Plaintiff’s claim is dismissed to the extent that it is based on any of
 8 those classifications.

9 With respect to Plaintiff’s claim that Dr. Hori denied her “information,
 10 communication and discussion regarding her health,” dkt. # 208 at 8, Plaintiff has not
 11 demonstrated that she was denied full and equal use and enjoyment of any services,
 12 advantages, or accommodations because of her race, color, religion, or national origin.
 13 Absent any supporting evidence, her conclusory assertions that Defendant “[s]ubjected
 14 her to inhumane treatment, humiliation, and lack of medical privacy,” dkt. # 208 at 8,
 15 are insufficient to establish a genuine issue of material fact. Shakur v. Schriro, 514 F.3d
 16 878, 890 (9th Cir. 2008). Even if the Court were to rely on Plaintiff’s factual
 17 allegations, Plaintiff has not demonstrated that she was denied equal access to medical
 18 services or treatment because of her race or religion. Thus, Defendant Hori is entitled to
 19 summary judgment on Plaintiff’s Title II claim.

19 **B. 42 U.S.C. § 2000d**

20 Title VI of the Civil Rights Act provides that “[n]o person in the United States
 21 shall, on the ground of race, color, or national origin, be excluded from participation in,
 22 be denied benefits of, or be subjected to discrimination under any program or activity
 23 receiving Federal financial assistance.” 42 U.S.C. § 2000d. A private individual may
 24 sue to enforce Title VI only in instances of intentional discrimination. Alexander v.

1 Sandoval, 532 U.S. 275, 281 (2001). The entity involved must be engaged in intentional
 2 discrimination and be the recipient of federal funding. Monteiro v. Tempe Union High
 3 School Dist., 158 F.3d 1022, 1026 (9th Cir. 1998).

4 According to Plaintiff, Dr. Hori accepts federal financial assistance and he denied
 5 her the benefit of communication and access to medical information when he provided a
 6 limited infectious disease consultation in August 2009. See Dkt. # 208 at 10. Plaintiff
 7 has not, however, come forward with admissible evidence that demonstrates intentional
 8 discrimination. Even viewing the facts in a light most favorable to Plaintiff,
 9 “conclusory statements of bias do not carry the nonmoving party’s burden in opposition
 10 to a motion for summary judgment.” Thornton v. City of St. Helens, 425 F.3d 1158,
 11 1167 (9th Cir. 2005). Plaintiff has not created a genuine issue of material fact and
 12 therefore, the Court GRANTS Defendant’s motion for summary judgment on Plaintiff’s
 13 Title VI claim.

14 **C. 42 U.S.C. § 2000h**

15 In her third amended complaint, Plaintiff asserts a claim under Title XI of the
 16 Civil Rights Act. Title XI, however, contains miscellaneous provisions related to,
 17 among other things, criminal contempt proceedings arising under the Civil Rights Act
 18 and preemption. 42 U.S.C. §§ 2000h, 2000h-4. Plaintiff has not articulated or shown
 19 the existence of any facts involving criminal contempt. Rather, she argues that summary
 20 judgment should not be granted before the close of discovery in civil rights cases. Dkt.
 21 # 208 at 10-11. Interpreting this statement as a request for a continuance under Fed. R.
 22 Civ. P. 56(d), the Court DENIES Plaintiff’s request. Plaintiff has not identified specific
 23 facts that discovery would reveal or explained how those facts would preclude summary
 24 judgment. Therefore, she has failed to meet her burden in seeking a continuance under
 25 Rule 56(d) and dismissal is appropriate. Tatum v. City & Cnty. of San Francisco, 441

1 F.3d 1090, 1100 (9th Cir. 2006); Nidds v. Schindler Elevator Corp., 113 F.3d 912, 921
 2 (9th Cir. 1996).

3 **D. Plaintiff's State Law Claims**

4 In a civil action where a district court has original jurisdiction, but the claims
 5 over which the federal court had original jurisdiction are abandoned or dismissed, the
 6 court "may decline to exercise supplemental jurisdiction" over the related state law
 7 claims." 28 U.S.C. § 1337(c). The decision to retain or decline jurisdiction must be
 8 made in light of "the objectives of economy, convenience and fairness to the parties, and
 9 comity." Trustees of Constr. Indus. and Laborers Health and Welfare Trust v. Desert
 10 Valley Landscape & Maintenance, Inc., 333 F.3d 923, 925 (9th Cir. 2003). "[I]n the
 11 usual case in which all federal-law claims are eliminated before trial, the balance of
 12 factors . . . will point toward declining to exercise jurisdiction over the remaining state-
 13 law claims." Carnegie-Mellon Univ. v. Cohill, 484 U.S. 343, 350 n.7 (1988).

14 Because the Court has dismissed all of Plaintiff's federal claims, the Court
 15 declines to exercise supplemental jurisdiction over her state law claims. Ove v. Gwinn,
 16 264 F.3d 817, 826 (9th Cir. 2001) ("A court may decline to exercise supplemental
 17 jurisdiction over related state-law claims once it has dismissed all claims over which it
 18 has original jurisdiction.") (internal quotation marks and citations omitted). Plaintiff's
 19 defamation, libel, and slander claims are therefore dismissed without prejudice.

20 **III. CONCLUSION**

21 For all of the foregoing reasons, the Court GRANTS Defendant Michael Hori's
 22 second motion for summary judgment (Dkt. # 156).

23 DATED this 25th day of March, 2014.

24 

25
 26 Robert S. Lasnik
 United States District Judge